

CIVIL COVER SHEET

The JS 44 civil cover sheet contains the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil action. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

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7763

I. (a) PLAINTIFFS

J. Michael Considine, Jr., 1760 Market Street, Suite 1100,
Philadelphia, PA 19103

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Jonathan J. Jagodinski, Radnor Township Police
Dept., 803 Iven Avenue, Wayne, PA 19087

County of Residence of First Listed Defendant Delaware

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 711 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 712 Labor/Management Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 714 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise	CIVIL RIGHTS	<input type="checkbox"/> 715 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 863 DIWC/DIWW (405(g))		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 864 SSID Title XVI		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 865 RSI (405(g))		
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	IMMIGRATION		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983

VI. CAUSE OF ACTION

Brief description of cause:
Retaliation for Interviewing Witnesses and Malicious Prosecution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$ *in excess of \$ 75,000.*

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/09/2013

SIGNATURE OF ATTORNEY OF RECORD

Michael Considine

12/12/2013

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFF

JUDGE

MAG. JUDGE

P D

UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1760 Market Street, Suite 1100, Philadelphia, PA 19103

Address of Defendant: 803 Iven Avenue, Wayne, PA 19087

Place of Accident, Incident or Transaction: Wayne, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases

(Please specify) _____

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
(Please specify) _____
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, J. Michael Considine, Jr.

counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: December 9, 2013

J. Michael Considine, Jr.

Attorney-at-Law

37294

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/9/13

Michael Considine

Attorney-at-Law

37294

Attorney I.D.#

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

J. Michael Considine, Jr.

CIVIL ACTION

v.

Jonathan J. Jagodinski,

Radnor Township Police Department :

NO. 13 7263

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. ()

December 9, 2013	J. Michael Considine, Jr.	Plaintiff
Date	Attorney-at-law	Attorney for
215-963-1555 ext. 828	215-963-9104	adventure7@gmail.com
Telephone	FAX Number	E-Mail Address

DEC 12 2013

PD

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J. Michael Considine, Jr., : Civil Action
Plaintiff

v.

13 7263

Officer Jonathan J. Jagodinski,
Radnor Township Police Department, : No. 13-cv-
Defendant

COMPLAINT

JURISDICTION AND VENUE

1. Jurisdiction is based on 28 U.S.C. §§ 1292, 1331, 1343 & 2201 and the doctrine of pendant jurisdiction, for redress for rights secured by the U. S. Constitution and the 1st and 14th Amendments under 42 U.S.C § 1983.

2. Venue is proper in the Eastern District of Pennsylvania as all the events herein took place in, the parties and witnesses reside in and the physical evidence is located within this district.

PARTIES

3. Plaintiff is J. Michael Considine, Jr., whose business address is 1760 Market Street, Suite 1100, Philadelphia, PA 19103.

4. Defendant is Jonathan J. Jagodinski, who at all times relevant to this complaint was an officer of the Radnor Township Police Department, who acted under color of law, within the course and scope of his employment as such.

His address is 803 Iven Avenue, Wayne, PA 19087.

FACTS

5. At all times relevant to this complaint Plaintiff was an attorney, admitted to the bar of the Commonwealth of Pennsylvania, I.D. #37294, having been admitted to the bar November 9, 1982.

6. In November 2011, Plaintiff was retained as an attorney by Jan and Robert Neubauer, guardians and grandparents of Nicholas Deshais, a student at Valley Forge Military Academy (VFMA), 1001 Eagle Road, Radnor, PA 19087. DeShais was dismissed and/or withdrew from the academy. The Neubauers stated they attempted to find out from the academy the facts of the incidents that led to his dismissal and/or coerced withdrawal from the academy and they were never told of many facts, despite efforts to communicate with VFMA staff. They also felt some of the tuition should be repaid since the dismissal was before the end of the semester.

7. The Neubauers asked Plaintiff to find out what happened in the incidents and gave the names of several eyewitnesses who were students at the academy they wanted Plaintiff to interview.

8. On December 12, 2011 Plaintiff went to VFMA. The Neubauers told him one of the witnesses was Marcos Settinieri. Plaintiff stood on the campus outside Martin Hall and asked the first person who he saw if he knew Marcos Settinieri. It turned he was speaking to him. Settinieri agreed to speak to Plaintiff and invited him inside Martin Hall. There he showed him where the incidents in question took place and told him what happened. Plaintiff also

spoke to Josh Bernstein, another witness. Both willingly spoke to Plaintiff. No one ever refused to speak to him or told him to leave.

9. Plaintiff left his business card with Settinieri.

10. Apparently a videotape showed Plaintiff entered the building.

11. Staff from VFMA spoke to Settinieri and called the police and gave police the name, address and phone number for Plaintiff.

12. On December 13, 2011, Defendant called Plaintiff at 610-431-3288, the number on his business card, and left a message on his answering machine stating Plaintiff was never allowed to go back to VFMA, or words to that affect, and stating Plaintiff would receive a citation.

13. At all times when he was on the campus of VFMA, there was no "no trespassing signs" or posting that authorization or other conditions needed to be met to go onto the campus or to speak to anyone, nor was there fencing, locked gates or sentries at gates to exclude intruders or limit entry. There was open access to sidewalks through the campus from outside the premises.

14. No one told Plaintiff to leave the VFMA premises or refused to speak to him.

15. At no time did Plaintiff attempt to compel statements out of the witnesses nor did they express any apprehension or unwillingness to speak. They willingly spoke to him. No one refused to speak or asked him not to ask questions.

16. The VFMA premises were open to the public at all times relevant to the complaint.

17. Plaintiff reasonably believed that anyone empowered to limit access would have licensed him to enter the premises.

18. On December 12, 2011, Defendant wrote Non-Traffic Citation No. P8738601-4 against Plaintiff for Defiant Trespass under 18 Pa. C.S.A. §3503(b)(1) stating Plaintiff “knowing he was not privileged to do so, without authorization from school officials. Notices posted at school entrances advise visitors of required authorization,” even though Plaintiff had no such knowledge and had no reason to believe he was not privileged to do so. It was not received by Plaintiff until weeks later.

19. No notices were posted at school entrances advising visitors of required authorization at the time Plaintiff went to the premises.

20. No one ever told Plaintiff to leave the premises nor did Plaintiff ever refuse to leave.

21. On April 18, 2012, after the hearing was rescheduled from March 21 and April 4, 2012 because Defendant twice did not appear, Plaintiff was found guilty of defiant trespass under 18 Pa. C.S.A. §3503(b)(1) by Magisterial District Judge John C. Tuten, 230 Sugartown Road, Wayne, PA 19087 in Magisterial District No. MDJ-32-1-29..

22. On May 1, 2012, Plaintiff file a Notice of Appeal from Summary Criminal Conviction.

23. On June 26, 2012, Plaintiff was found not guilty by the Delaware County Court of Common Pleas in Summary Appeal No. 494-12.

24. Plaintiff's appearance at VFMA was for a legitimate business purpose and those he interviewed were willing speakers.

25. Plaintiff entered the premises by a road or driveway to a back parking lot. From that roadway entrance there were no "no trespassing" signs or signs indicating permission or registration was required to enter the campus, nor was there any such notification at the back parking lot.

26. At other entrances to the campus at the time Plaintiff was on the campus there were no "no trespassing" signs or signs indicating permission or registration was required to enter the campus.

27. Outside or inside Martin Hall there were no signs stating entry by non-students was prohibited or subject to permission.

28. Defendant never attempted to speak to Plaintiff before making the phone call and issuing the citation to see if anyone told Plaintiff to leave the premises.

29. Defendant made no attempt to determine if anyone ever told Plaintiff to leave the premises.

30. Valley Forge military Academy had no policy banning communication between students and adults who were not staff at VFMA inside or outside of any building on campus.

31. Defendant made no attempt to determine if there were signs posted indicating “no trespassing” or that permission was required to enter onto the campus before issuing a citation to Plaintiff.

32. Defendant before issuing the citation read the card indicating Plaintiff was an attorney and from which he obtained Plaintiff’s phone number, knew he was on campus as part of his business as an attorney, that he wrote a letter to Colonel David R. Gray, president of VFMA in the DeShais matter, that Plaintiff spoke to someone on campus as a part of that business, that no one told him Plaintiff refused to leave after being told to leave and that there were no signs posted on the campus indicating permission was needed to go onto the campus.

33. Plaintiff issued the citation in retaliation for and in a deliberate attempt to punish Plaintiff for and intimidate him into not conducting any further investigation into a matter involving VFMA and to keep him from obtaining information from willing witnesses in the Deshais and future matters.

34. At the hearing before Judge Tuten Defendant and/or a representative of VFMA stated in effect Defendant wrote the citation because of concern for safety of the cadets, one of whom was 16, but failed to show how anything Plaintiff did had any effect on their safety or that anything Plaintiff did in

interviewing them put them in danger or caused a reasonable concern for their safety.

COUNT I: VIOLATION OF THE FIRST AMENDMENT

35. The averments of Paragraph 1-34 are incorporated by reference.

36. Defendant filed the citation without probable cause or doing any investigation to determine if the premises were posted with no trespassing signs or signs requiring approval or registration by those on the campus or if anyone ever told Plaintiff to leave or if he refused to leave.

37. The citation was also filed in retaliation for Plaintiff's performing a legitimate, necessary service of obtaining information from willing speakers in a legal investigation, a significant function of an attorney, and to intimidate him from not investigating further into incidents involving DeShais or others or matters or to speak to witnesses on the VFMA campus in any matters involving VFMA.

38. Defendant issued to Plaintiff a lifetime ban on, and veiled threat of arrest for his ever returning to the premises of VFMA, not limited in scope or time, even if given permission by VFMA, without sufficient justification, even though any member of the public can walk onto the premises, an open campus, without any authorization.

39. The actions of Defendant chill speech protected under the First Amendment and in effect ban him from going to or speaking to any person for

any purpose, even if necessary for representation of a client or if given permission by VFMA, on the premises of VFMA.

WHEREFORE, Plaintiff respectfully request that the court enter judgment in his favor and against Defendant in an amount in excess of \$75,000., plus costs and attorney's fees.

COUNT II: DECLARATORY JUDGMENT

40. The averments of paragraphs 1-39 are incorporated by reference.
41. Plaintiff seeks a Declaratory Judgment pursuant to 28 U.S.C. § 2201 that his rights under the 1st Amendment have been violated.

WHEREFORE, Plaintiff respectfully request that the court enter judgment pursuant to 28 U.S.C. § 2201 that his rights under the 1st Amendment have been violated.

COUNT III: MALICIOUS PROSECUTION

42. The averments of paragraphs 1-39 are incorporated by reference.
43. Defendant filed the charge of Defiant Trespass under 18 Pa. C.S.A. §3503(b)(1) against Plaintiff.
44. The proceedings terminated in Plaintiff's favor. He was found not guilty.
45. There was no probable cause for the filing of the charge.

WHEREFORE, Plaintiff respectfully request that the court enter judgment in his favor and against Defendant in an amount in excess of \$75,000., plus costs and attorney's fees.

Date: December 10, 2013

Michael Considine
J. Michael Considine, Jr.
1760 Market Street, Suite 1100
Philadelphia, PA 19103
(215) 963-1555 extension 828